

(a) To grant authority to any department, institution, office or other agency or body for which an appropriation is made in Section 1 or 2 of this act, to expend the moneys so appropriated otherwise than in accordance with the details therein set forth, and for such purpose to authorize transfers of funds between the items entitled 'Personal Service' and 'Maintenance' and between items in the appropriation for 'Total Additions and Betterments' within the department, division or agency for which such an appropriation is made.

* * *

(f) To allot from any funds appropriated for the maintenance of such controlling board to any department, board, institution, or other agency of the state such amounts for operation and/or maintenance of such agency as may be shown to the satisfaction of such controlling board to be necessary or expedient."

However, it is believed that there is no authority in the language above quoted or any other provision of the act, which authorizes the controlling board to allot moneys to the Department of Public Works for the purchase of land for the purpose of extending a road, or otherwise.

It may be further pointed out that the Legislature in said House Bill No. 510, did in a number of instances appropriate money for the purchase of "land" which is indicative of the fact that when it intended money therein appropriated to be used for such purpose, it expressly so stated.

In view of the foregoing and in specific reply to your inquiry, you are advised that under the present appropriation bill there is no authority whereby the Department of Public Works can make an expenditure for the purchase of land for road purposes.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1324.

APPROVAL, FINAL RESOLUTION FOR EXTRA WORK CONTRACT IN
TUSCARAWAS COUNTY.

COLUMBUS, OHIO, December 23, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1325.

TAX AND TAXATION—SPECIAL ASSESSMENTS—DUTY OF COUNTY
TREASURER TO ACCEPT GENERAL TAXES EVEN THOUGH SAID
ASSESSMENTS ARE NOT PAID.

SYLLABUS:

It is the duty of the county treasurer to accept the payment of general taxes when tendered, notwithstanding assessments against the same lands placed upon the tax duplicate under the provisions of Section 6923 of the General Code are delinquent and are not paid

at the time the general taxes are paid. The payment of said general taxes does not relieve the treasurer of the burden of collecting such assessments.

COLUMBUS, OHIO, December 23, 1929.

HON. FRANK F. COLE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—Your communication of recent date reads as follows:

“We have an ever increasing number of cases in our county in which assessments have been made on farms for the construction of highways. The owners thereof have paid their regular tax but have refused to pay the special assessment. The treasurer has in the past accepted the regular tax and permitted the special assessment to go delinquent. I believe it is the idea of the property owners to fight the legality of the assessment when we undertake to collect the same.

Now, can the county treasurer refuse to accept the regular tax unless accompanied by the special assessment and declare the entire tax delinquent when the tax payers present the amount of their regular tax but not the amount of assessment?

The only authority we have is that contained in Section 6923 of the General Code, which says that assessments shall be placed upon special duplicate. But the case of *Drake vs. Bessley*, 26 O. S. 351, holds that an assessment of this kind is not even personal in its nature but is strictly a tax on land.

Therefore, can the same be divided by the auditor in accepting tax and accept the regular tax on the land and declare the special assessment only, delinquent, or can he as above stated refuse to accept the regular tax unless accompanied by a check for the special assessment, and in event tax payers refuse, declare the entire amount delinquent?

We would like this information immediately because of the fact in the past we have had several instances and we are going to be confronted with a large number at the December tax paying period.”

Section 6923 of the General Code, to which you refer, in so far as it is applicable to your inquiry, provides:

“All assessments, with interest accrued thereon, made under the provisions of this chapter, shall be placed by the auditor upon a special duplicate to be collected as other taxes, and the principal shall be payable in not more than twenty semi-annual installments extending over a period of not more than ten years, as determined by the county commissioners. * * *”

Your attention is directed to Opinion No. 2833, issued by my immediate predecessor under date of November 3, 1928, and reported in the Opinions of the Attorney General for 1928, Vol. IV, page 2526, which contains a comprehensive discussion relative to the powers of county treasurers to demand payment of assessments and to refuse to accept taxes without such assessments. The conclusions of said opinion, as stated in the syllabus, read:

“1. It is the duty of the county treasurer to proceed in the same manner and at the same time to collect both general taxes and special assessments.

2. It is not the duty of the county treasurer to refuse acceptance of the payment of general taxes when tendered, notwithstanding special assessments are due and payable at the same time but are unpaid.”

While the opinion was based upon Section 3892 of the General Code, as amended

by the 87th General Assembly in 112 O. L. 61, and which relates to the special assessments of a municipality, by analogy the same would clearly apply to the situation which you present. Said Section 3892 provides that the county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner and at the same time as other taxes are collected, etc. In said opinion the Attorney General considered the writ of mandamus issued by the Court of Appeals in the case of *State ex rel. vs. Brenner, Treasurer of Mahoning County*, 31 O. A., 465, which required and commanded the county treasurer "to discontinue the custom and practice of accepting the general taxes upon such lots and lands, without requiring the owners thereof to pay such special assessments at the same time." The then Attorney General expressed doubt as to whether the court intended to go so far as the language of the entry would indicate; but, notwithstanding the holding, concluded that in view of the long standing administrative interpretation and decisions to the contrary, the decision should be regarded as the law governing the defendant as treasurer of Mahoning County, but should not be generally followed as a precedent. I have examined a copy of the opinion reported in the Ohio Bar Reports under date of August 27, 1929, and it discloses that it is no more definite with reference to the specific question considered than was the entry which was considered in the opinion of my predecessor.

In view of the foregoing, it must be conceded that the question is not free from doubt. However, it is my opinion that the legislature has not as yet said that the county treasurer may not accept the payment of the general tax unless all assessments are paid.

Therefore, I feel constrained to concur in the conclusion of my predecessor, and in specific answer to your inquiry, you are advised that it is the duty of the county treasurer to accept the payment of general taxes when tendered, notwithstanding assessments against the same lands placed upon the tax duplicate under the provisions of Section 6923 of the General Code are delinquent and are not paid at the time the general taxes are paid. The payment of said general taxes does not relieve the treasurer of the burden of collecting such assessments.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1326.

APPROVAL, BONDS OF VILLAGE OF ST. CLAIRSVILLE, BELMONT
 COUNTY \$5,500.00.

COLUMBUS OHIO, December 23, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.